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VIA DMM

Hon. Michelle L. Phillips
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case No. 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Dear Secretary Phillips:

Environmental Defense Fund hereby submits for filing in the captioned docket these Comments of Environmental Defense Fund on the Coalition for Safe and Reliable Energy Petition for Hearing to Temporarily Suspend or Modify Renewable Energy Program Pursuant to Public Service Law §66-P(4).

Respectfully submitted,

Cole Jermyn

**Comments of Environmental Defense Fund on the Coalition for Safe and Reliable Energy
Petition for Hearing to Temporarily Suspend or Modify Renewable Energy Program
Pursuant to Public Service Law §66-P (4)**

I. Introduction

In 2016, the Public Service Commission (“Commission”) approved its Order Adopting a Clean Energy Standard (“CES”), composed of the Renewable Energy Standard (“RES”), now known as Tier 1, to increase renewable energy generation in New York by requiring load-serving entities (“LSEs”) to procure renewable energy certificates (“RECs”), and the zero-emission credit (“ZEC”), also known as Tier 3, to support existing zero-emission generation.¹ In 2020, in response to the passage of the Climate Leadership and Community Protection Act (“CLCPA”), the Commission approved its Order Adopting Modifications to the Clean Energy Standard.² This Order adopted the CLCPA’s 2030 target of 70% of statewide load being served by renewable energy, and created two new CES elements to meet the CLCPA’s requirements for a Renewable Energy Program consistent with the 2030 goal: a competitive Tier 2 program to support privately-owned wind and hydroelectric facilities, and a Tier 4 aimed at delivery of renewable energy into New York City.³ The Commission has repeatedly modified the CES since its creation to support its ultimate renewable and zero-emission energy goals, but has not aligned the CES or created a separate program to meet the CLCPA’s 2040 target of 100% of statewide load being served by zero-emission energy sources.⁴

On January 6, 2026, the Coalition for Safe and Reliable Energy (“Coalition”) filed its *Petition for Hearing to Temporarily Suspend or Modify Renewable Energy Program Pursuant to Public Service Law §66-P (4)* (“Petition”). This statutory provision authorizes the Commission to “temporarily suspend or modify” the LSEs’ (i.e. the utilities’ and energy service companies’) obligations under the Renewable Energy Program if, after holding a hearing on the topic, it finds that “the program impedes the provision of safe and adequate electric service; the program is likely to impair existing obligations and agreements; and/or that there is a significant increase in arrears

¹ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016).

² Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Adopting Modifications to the Clean Energy Standard (Oct. 15, 2020) [hereinafter “CES Modification Order”].

³ *Id.* at 22-23.

⁴ See, e.g., Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings (May 15, 2025) [hereinafter “Biennial Review Order”].

or service disconnections that the commission determines is related to the program.”⁵ The Petition requested that the Commission hold a hearing under this provision and consider such a temporary suspension or modification of the Commission’s Renewable Energy Program, arguing that it “may impede the provision of safe and adequate electric service and upset the necessary balance of reliable, economic and sustainable energy in New York State.”⁶ The closest the Petition comes to stating the Coalition’s preferred outcome from this hearing is when it claims that the Commission “has the authority, and the responsibility, to suspend or modify the [2030 and 2040] targets.”⁷ On January 28, 2026, the Commission issued a notice soliciting comments on the Petition.⁸ These comments are responsive to that notice.

The Commission should reject the Petition for three reasons. First, the petition ultimately requests action that is outside of the Commission’s authority, making any hearing on the subject moot. Second, the Petition fails to articulate how the Renewable Energy Program is a threat to safe and adequate electric service, or how modifications to the program within the Commission’s authority could address this threat. In reality, the Petition is a collateral attack on decision-making by other agencies. Finally, the petition is not timely as the Commission has adequate opportunity to review the arguments raised in the petition as part of its biannual review of the CES required later this year. Each of these responses are discussed in detail below.

II. Discussion

A. The Petition requests action that is outside of the Commission’s authority, making any hearing moot.

In invoking Section 66-p(4) to seek changes to the 2030 and 2040 targets, the Petition ignores the limits of the statute. Section 66-p(4) authorizes the Commission to “temporarily suspend or modify the obligations under” the Renewable Energy Program created to meet the 2030 and 2040 targets.⁹ The language used throughout Section 66-p makes it clear that obligations and targets are two different things, and Section 66-p(4) only includes the former.¹⁰ The Commission

⁵ N.Y. P.S.L §66-p(4).

⁶ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Petition for Hearing to Temporarily Suspend or Modify Renewable Energy Program Pursuant to Public Service Law §66-P (4) (Jan. 6, 2026) [hereinafter “Petition”].

⁷ *Id.* at 23.

⁸ *Petition for Hearing to Temporarily Suspend or Modify Renewable Energy Program Pursuant to Public Service Law §66-P (4)*, Notice Soliciting Comments Regarding Petition for Hearing to Suspend or Temporarily Modify Renewable Energy Program (Jan. 28, 2026).

⁹ N.Y. P.S.L §66-p(4).

¹⁰ *See*, N.Y. P.S.L §66-p(2) (referring to “obligations of jurisdictional load serving entities” and “the targets” as separate categories).

could, for example, modify the number of RECs each LSE must procure or the timeline on which they must procure it, as these constitute obligations on the LSEs under the program. It cannot, however, use the hearing process to push back the targets to a later date, because this would represent more than a change to LSE obligations.

The Petition does not request or even suggest any obligation changes as a possible action resulting from a Commission hearing; the only suspension or modification the Petition appears to suggest is to the targets themselves. The Petition states that “To the extent that [keeping up with forecast demand] is precluded by the Renewable Energy Program targets, the Commission has the authority, and the responsibility, to suspend or modify the targets....”¹¹ This is incorrect as a matter of law; in advancing this position, the Petition asks for more than the Commission can legally give.

The time-limited language of Section 66-p(4) further supports the interpretation that the Commission cannot change the targets through a 66-p(4) hearing. This provision authorizes the Commission, under defined circumstances, to *temporarily* suspend or modify LSE obligations. The Petition repeatedly focuses on the feasibility of the 2030 and 2040 targets, but it does not explain how a temporary adjustment to these targets would or could remedy the reliability concerns it raises. Any suspension or modification would be little more than an illusion, as the underlying target would still necessarily remain in place even if it were technically “suspended” for a period of time. The fact that this statutory provision does not allow for permanent changes supports the conclusion that it is meant to be a time-limited safety valve for the specific LSE requirements of the CES, not a pathway to permanently change the CLCPA’s electric sector targets.

If the Petition is read generously to avoid butting up against this legal constraint, it is even less clear what the Coalition is seeking. The Petition frames its request as limited to initiating a hearing, while simultaneously nodding toward specific substantive outcomes—such as repowering of existing fossil-fuel generators—without clearly stating whether those outcomes constitute the relief it seeks or how they are tied to the utilities’ obligations under the CES. As explained above, the CES predates the CLCPA, with the Commission modifying it four years after its creation to align with the 70 percent by 2030 requirement.¹² The Petition does not identify whether it seeks changes to Tier 1 procurement volumes, offshore wind solicitations, the REC contracting process, or any other specific element of the existing framework, and does not clarify whether it seeks

¹¹ Petition at 23.

¹² See CES Modification Order at 22-23.

changes only those obligations created or modified since 2020. In this way, the Petition frames its request as procedural while implicitly advancing particular policy changes with no clear connection to the statutory language at issue. This approach leaves unclear whether the Coalition is requesting merely an evidentiary proceeding to consider whether changes are needed, or is seeking specific revisions to the Commission’s existing CES framework, or something else entirely.

Finally, while the Petition references the statutory language in Section 66-p(4) concerning customer arrears and service disconnections,¹³ it does not allege that the statutory threshold has been met, nor does it attempt to demonstrate that arrears are causally related to the Renewable Energy Program. Simply noting that the issue may be “worthy of exploration” is not equivalent to asserting that the statutory threshold for Commission action has been met, and the Commission should not treat it as such.¹⁴

In sum, the petition fails to present a legally cognizable request under Section 66-p(4). By requesting Commission action that is outside of its authority—the delay of the 2030 and 2040 targets—the Petition’s immediate request for a hearing should be treated as moot and the Petition dismissed.

B. The petition fails to articulate how the Clean Energy Standard is a threat to safe and adequate service and serves as a collateral attack on other State agencies’ decision-making.

In addition to the Petition’s implied request for action beyond the Commission’s authority, it fails to articulate a colorable factual basis to support its assertion that the Clean Energy Standard threatens the provision of safe and adequate electric service in New York. The Petition alleges that New York is not on track to hit the 2030 CLCPA target;¹⁵ it explains why the Coalition believes the state is not likely to hit the 2040 target;¹⁶ and it describes the shrinking reliability margins on New York’s grid.¹⁷ But the Petition never attempts to explain why these allegations, even if true, support the conclusion that the CES poses a threat to system reliability, or how the Commission can make changes to the CES to address such threat.

The Petition does not attempt to provide such an explanation because there likely is not one. Shrinking reliability margins in New York are attributable to multiple factors including lack

¹³ Petition at 2.

¹⁴ *Id.* at 2 n.2.

¹⁵ *Id.* at 14-17.

¹⁶ *Id.* at 17-19.

¹⁷ *Id.* at 19-23.

of maintenance and retirement of existing generators, load growth both from large load customers and from electrification across the grid, and insufficient pace in adding new generation to the system. These converging factors underscore the importance of a program that supports additional generation capacity and/or the continued operation of existing capacity, and that's exactly what the CES does. Temporarily suspending or modifying the program in ways that weaken the utility's obligations and slows the deployment of additional renewable energy capacity, as the Petition seems to request,¹⁸ is more likely to worsen reliability concerns by further reducing the addition of new generation capacity without having any effect on the other relevant factors.

The reality is that the Coalition's criticisms are not truly with the CES, or any other Commission actions, and this is clear from the limited information the Petition does include to support its request. The Petition references the Department of Environmental Conservation's ("DEC") Peaker Rule as leading to the retirement of some fossil fuel fired-generators,¹⁹ as well as the DEC's decisions denying Title V air permits for two repowering projects.²⁰ But it goes on to claim, without any supporting evidence, that "[w]ithout a change to the Renewable Energy Program Targets, [repowering] is not feasible" and that "the Renewable Energy Program has also been cited as a basis for rejection" of these air permits.²¹ This is false. The DEC's only reference to the CES in either denial was to state in its permit denial for the Astoria project that two transmission projects then under consideration by the Commission as part of CES Tier 4 could provide additional transmission capacity into New York City, and that at the time there was no unresolved reliability need *even without those projects*.²²

As detailed in Section A above, the Petition appears to conflate the 2030 and 2040 targets with the Clean Energy standard and the utilities' obligations under it. This is a fatal flaw. DEC's notices of denial, which the Petition itself directly quotes, state that approval of air permits for facilities expected to operate beyond 2040 would be "inconsistent with the CLCPA's requirement for emission-free electricity generation by 2040"²³ and "contrary to the requirements of the [CLCPA]."²⁴ But again, the targets themselves and the LSE's obligations under those targets are

¹⁸ *Id.* at 23 ("The Coalition is generally supportive of the continued pursuit of renewable energy generation – but not at the expense of grid reliability and safe, adequate and affordable electric service.").

¹⁹ *Id.* at 19 n.48.

²⁰ *Id.* at 22.

²¹ *Id.*; *id.* at 22 n.64.

²² Department of Environmental Conservation, Notice of Denial of Title V Air Permit for Astoria Gas Turbine Power, at 16-17 (Oct. 27, 2021), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/nrgastoriadecision102721.pdf.

²³ *Id.* at 12.

²⁴ Department of Environmental Conservation, Notice of Denial of Title V Air Permit for Danskammer Energy Center, at 10 (Oct. 27, 2021), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/danskammerdecision102721.pdf.

two distinct categories. The action the Coalition appears to request in the Petition, that the Commission invoke Section 66-p(4) to modify the 2030 and/or 2040 targets to then give DEC the flexibility to approve air permits for repowering projects,²⁵ is simply outside the bounds of the Commission’s authority under this statutory provision.

Additionally, even if the Commission could invoke Section 66-p(4) to modify the targets, DEC’s decision denying the cited permits rests independently on its own obligations under the CLCPA. Section 7(2) of the CLCPA requires all state agencies, when considering “permits, licenses, and other administrative approvals and decisions...” to consider “whether such decisions are inconsistent with, or will interfere with, the attainment of the statewide GHG emission limits established in Article 75 of the environmental conservation law.”²⁶ DEC explicitly invoked this requirement in denying permits for both the Danskammer and Astoria repowering projects.²⁷ No changes to the 2030 and/or 2040 targets, whether within or outside of the Commission’s authority, would change DEC’s obligations under the CLCPA. The Petitioners are requesting relief from the wrong agency, and there is no reason for the Commission to hold a hearing on a topic outside of its statutory authority.

Ultimately, there are clear statutory reasons why the Petition’s arguments are misplaced. The Coalition attempts to hide this through an everything-but-the-kitchen-sink approach to listing its criticisms of the CES and progress towards the 2030 and 2040 targets, without ever detailing how Commission action could address its concerns. This lack of any articulable mechanism should lead the Commission to reject the petition.

C. The Petition is superfluous given the upcoming biennial review of the Clean Energy Standard

Section 66-p(3) of the Public Service Law directs the Commission to “issue a comprehensive review of the program established pursuant to this section” beginning July 1, 2024 and every two years thereafter.²⁸ The Commission is obligated as part of this review to consider at minimum “(a) progress in meeting the overall targets for deployment of renewable energy systems

²⁵ Petition at 23 (“The inability to timely develop renewable generation and keep up with forecast demand necessitates keeping all options on the table, including existing fossil-fuel generation. To the extent that is precluded by the Renewable Energy Program targets, the Commission has the authority, and the responsibility, to suspend or modify the targets to achieve its paramount objective of ensuring reliable and affordable electric service and protection of ratepayers.”) (internal quotations omitted).

²⁶ Chapter 106 of the Laws of 2019.

²⁷ Department of Environmental Conservation, Notice of Denial of Title V Air Permit for Astoria Gas Turbine Power, at 2; Department of Environmental Conservation, Notice of Denial of Title V Air Permit for Danskammer Energy Center, at 5.

²⁸ N.Y. P.S.L §66-p(3).

and zero emission sources, including factors that will or are likely to frustrate progress toward the targets; (b) distribution of systems by size and load zone; and (c) annual funding commitments and expenditures.”²⁹ The Commission completed the first cycle of this biennial review process in May 2025,³⁰ and must begin the next cycle by July 1 of this year. This review process is the proper venue for the issues raised in the Petition.

The impact of the CES on the provision of safe and adequate service is already clearly in scope for the biennial review, which is demonstrated by the fact that system reliability and the impacts of the CES on the grid were a theme throughout the Commission’s first Biennial Review Order. This includes discussion of the impact of transmission capacity availability on renewable generation interconnection,³¹ capacity accreditation,³² proposals regarding utility ownership of renewable generation,³³ and proposals regarding changes to the solicitation process to improve the generation supply mix.³⁴ This has spurred further work by the Commission, Staff, and stakeholders, such as the recent comment opportunity on utility ownership of generation,³⁵ and Commission Orders on the ZEC program,³⁶ the Maintenance Tier Program,³⁷ and the Offshore Wind Implementation Plan,³⁸ all in this proceeding. Connecting these efforts is the Commission’s ongoing focus on balancing system reliability, progress towards New York’s climate and electrification goals, and energy affordability for all ratepayers, including in its implementation and modifications of the CES. The Petition never attempts to explain why the upcoming review is inadequate for addressing their concerns. In fact, it never even acknowledges that this review will begin in just a few months.

Given all of this, it is clear the Petition is an attempt to circumvent the processes that already exist to review and consider changes to the CES. The biennial review process is already set up to consider and address the concerns raised in the Petition, and the Commission has

²⁹ *Id.*

³⁰ *See* Biennial Review Order.

³¹ *Id.* at 9.

³² *Id.* at 10.

³³ *Id.* at 24.

³⁴ *Id.* at 40-41.

³⁵ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Notice Soliciting Comments (Jan. 27, 2026).

³⁶ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Extending Zero-Emissions Credit Program (Jan. 22, 2026).

³⁷ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Modifying Maintenance Tier Program (Jan. 23, 2026).

³⁸ Case No. 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Approving Offshore Wind Implementation Plan (Feb. 13, 2026).

demonstrated its authority to, and interest in, considering CES modifications. If the Commission were to consider holding a hearing pursuant to Section 66-p(4), it should make that determination as part of its upcoming biennial review, rather than as a one-off separate process.

III. Conclusion

EDF thanks the Commission for the opportunity to provide these comments, and recommends it reject the petition for hearing for the reasons detailed above.